1949. K File No. O. Electricity 49.

Legal Dept.

A. BRANCH

Subject:— Opinions under the Indian Electricity Act 1910

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File No. O. Electricity | 49.

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C O N T E N T S.

Legal Department File No. C. Electricity / 1949

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L.D.R.I.No. 10968 dt. 31.8.48

Submitted with reference to P.W.D. note at page 21-23 ante.

These pps. pertain to the supply of electric energy to M/S. G.G.Dandekar Machine Works Ltd. for their factory at Bhiwandi by M/S. Tatas. The supply of electric power to M/S G.G. Dandekar was sanctioned under G.E. No. S. 59/30/6204-EL(c), dt. 9.2.48. The site where the supply is to be given falls withing the area of supply of M/S. Amalgamated Elec. Co, (Belgaum) Ltd. and also M/s. Tatas. (vide G.N. - No. 3991/27 dt. 10.3.34 as amended by G.N.No. 3991/27 dt. 26.2.42 in this connection). The Tatas have approached Govt. for permission to supply energy to M/s. Dandekar Machine Works Ltd. in accordance with the proviso to the Govt. Notfn. refd. to above M/s. Amalgamated Elec. Co. who were consulted in the matter have objected to M.s. Tatas proposals on the fol. grounds viz.

1. M/s. Dandekar are their consumers for the last 19 yrs. they should therefore continue be their (supply Co's) consumers.

2. Any consumer cousuming less than 500000 units a year s is not allowed to be connected to the Tata syst system in tha area of supply of B.E.S.T. is the annual consumption of M/s. Dandekar is estimated to be only about 350000 units a year, the Tatas. should not be allowed supply the power. The Electrical Engineer ascertained that M/s. Dandekar's consumption would be in the neg neighbourhood of 355000 units per annum and ther fore thinks that the Tatas are not entitled to give the supply M/s. Tatas however contend that they are entitled to give the supply in accordance with cl. XII of their consent contract with M/s. Amalgamated Elect. Co. If Govt. sanct to the proposal of the Tatas, M/s. Dandekar will get ene energy at cheaper rates. The object of P.W.D. notfn. N 3391/27, dt. 10-3-34 was to provide a possible rival in

in the neighbourhood of certain authorized licensees in order to promote healthy competition which tends to the advantage of the consumers whose interest it is the duty of Govt. to safe-guard. But at the/time same the proviso seems to have been interested to preclude the possibility of M/s. Tatas retailing supply to the detriment of the interest of other distributing licencees. In these circumstances, R.L.A. has been requested to advise whether M/s. Tata Power Co. Ltd. maybe granted permission to supply also. Power to M/s. G.G. Dandekar Machine Works against the objections raised by M/s. Amalgamated Electric Co.

The Tata Power Co. Ltd. are the holders of the Nila Mula Valey (Hydro Electric License) 921 granted to them by the Govt. of Bombay under sec. 3(1) of the Indian Electricity Act 1910, by P.W.D. notfn. no. 3991/27, dt. 10-3-34 the powers under the license were extended to the area which presumably included Bhivandi, subject to the following proviso :-

"That the licensees shall notexcept with the written consent of Government, given under consulting the existing licensees or permit holders under section 28 of the Indian Electricity Act, 1910, be entitled to supply energy to any consumer other than such licensee or permit holders within their respective areas."

Clause XII of the agreement between M/s. Tatas & the Amalgamated Electricity Co.(Belgaum) Ltd. reads as it follows :-

"Notwithstanding any of the terms and provisions of this agreement the Co. shall be entitled to give supply with the written consent of Govt. within the area of supply authorised by the License to individual consumers within that area willing to take and in fact taking not less than 100,000 B.O.T. units per annum."

In this opinion No. 6173, dt. 10-11-36 R.L.A. has held that the a/m. cl. XII would be matter of fact inoperative as the licencees can raise valid grounds against Govt. granting promission in any particular case and Govt. will notbe bound by the licencees contract with the Tatas.

It is true that by cl. 5(1)(b) of the N.M.V. (H.E.) License 192 the Tatas are precluded from supplying energy to factories etc where the annual consumption is less than 500000 units. But this clause operates only in cases falling within the area of the B.E.S.T. Sub-clause IV of cl. 5 of the License makes it clear that -

"No restriction imposed upon the licensees by sub-clauses (I)(b) and (II) of this clause shall be applicabl to supply of energy given in any extension of the area of

Office of the R.L.A.

P.W.D. Notification No. 3991-22, dated 10-3-1934. clauses 12 of agreement between Tata Power Co. Ltd. and the Bhiwandi Electric Supply Co.

R.L.A.'s Opinion No. 6173, dated 10.11.1936.

It is not quite clear on what precise point P.W.D. desures the R.L.A's opinion. The legal position arising out of the proviso to the P.W.D. Notification No. 3991-27, dated 10th March 1934, and clause 12 of the draft agreement between the Tata Power Company, Ltd. and the Bhiwandi Electric Supply Company has been fully considered by the R.L.A in his last opinion No. 6173, dated 10th November 1936. As pointed out in that opinion, notwithstanding clause 12 of the agreement Government would be bound to consider such grounds and will not be bound by the Company's contract with the Tatas nor will the latter be able to prevent the Company from acting thus when Government cousult them. It is, therefore, clear that the Tata Power Company, Ltd. could not be able to rely on clause L2 of the agreement to prevent consultation with the Amalgamated Electricity Company. Belgaum, Ltd. before Government consents to the supply to Dandekar Machine Works, Ltd. for their factory at Bhiwandi. Government will have, therefore, to ~~xxxxxx~~ consult the Amalgamated Electricity Company, Belgaum Ltd. and conside whether there are any valid grounds to refuse consent to the Tata Power Company, Ltd. supplying energy to Da-ndekar Machine Works, Ltd. for their factory at Bhiwandi. Clause 5 ; sub-clause 1(b) of the Nila Mula Valley (H.E.) Licence, 1921, will have no application, since the are of supply is outside the City of Bombay.

P.M.Lad
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Remembrancer of Legal Affairs.

U.R. to P.W.D. , No. 169 , dated the 7th January 1949.

S.C. 15.6

4 copies.

Submitted with reference to P.W.D. note at p. 253 ante.

The facts of the case have been fully stated in P.W.D. note dated 15.10.48 at page 247 to 250 ante. It appears that the Jambusar Electric License was granted to Mr. M.R. Patel in 1941. It was transferred and assigned to the Jambusar Electric Supply Co. Ltd., in 1942. The Jambusar Electric Supply Co. Ltd. was taken into voluntary liquidation in 1946 but the company is not yet dissolved. In July 1947 the company applied for assignment of the Jambusar Electric License to Yogendra & Bros. In November 1947 the company informed Government that negotiations in the matter were going on with another party viz. M/s Mahendra Electric Works The last mentioned party purchased the Jambusar Electric License from the Jambusar Electric Co. Ltd. (under liquidation) on 2nd June 1948 and has entered into an agreement dated 8th August 1948 to sell the license to another company also styled as the Jambusar Electric Supply Co. Ltd. which was registered on 23.7.1948. As Government has not given its consent to the transfer of the undertaking of the Jambusar Electric Supply Co. Ltd. (under liquidation to M/s Mahendra Electric Works, P.W.D. is of the opinion that the agreement between M/S Mahendra Electric Works and the new Jambusar Electric Supply Co. Ltd. regarding the assignment of the license is not valid and the action of M/S Mahendra Electric Works in transferring the licenese to the newly formed company is not legally in order. According to the P.W.D. the proper course would be for Jambusar Electric Supply Co. Ltd. (under liquidation) to apply for assignment of the Jambusar Electric License to M/S Mahendra Electric Works and after Government has approved of the assignment, M/S Mahendra Electric Works should approach

Government for further assignment and transfer of the license to the newly formed company. If the last mentioned company ~~xxxxx~~ wishes to take over the license from the original company (in liquidation) a fresh agreement will have to be entered into by these companies and the company under liquidation will have to approach Government for the requisite sanction.

According to sub-sections (2) and (3) of section 9 of the Indian ~~Xxxxxxxxx~~ Electricity Act, 1910

"(2) the licensee shall not at any time assign his license or transfer his undertaking or any part thereof by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the provincial Government.

(3) Any agreement relaging to any transaction of the nature described in sub-section (1) or sub-section (2), unless made with, or subject to, such consent as aforesaid, shall be void."

A "Licensee" means any person licensed under Part II to supply energy. (see 2(h).

Clause 18 of the Jambusar Electric License provides that -

"18. Assignment of the license:- At any time after the commencement of this licence the licensee may, with the previous consent in writing of Government, and subject to compliance with such conditions upon which such consent may be given, assign this license and transfer the whole of the undertaking in respect of which this license is granted (including all lands, buildings, works, materials, and plant of the licensee) to any individual or company formed or to be formed and registered in the Province of Bombay in accordance with the law for the time being in force in British India, or, in Great Britain under enactment relating to companies for the time being in force there and having ~~xx~~ authority to take over the license and the said undertaking as the case may be ~~xx~~ and to exercise the powers and perform obligations given to or imposed upon the licensee under this license, the Act, and the rules, and on such assignment and transfer, the rights, powers, authorities, obligations and liabilities of the licensee shall be exercisable by and shall attach to such indigidual or company formed or to be formed as aforesaid."

The "Jambusar Electric Supply Co. Ltd. (under liquidatio ~~xxxxx~~ which is the present licensee has already applied to Government for permission to transfer the license to M/S Mahend

Electric ....

Works, and therefore they can be said to have complied with the requirements of sub-sections (2) and (3) of section 9 of the Act. It is however not understood how the transfer has taken place on 2.1.48 when Government has not yet approved of the transfer. Whether M/S Mahendra Electric Works hold any license at present is not clear from these papers. Since Government has not yet given its consent to the transfer of the Jambusar Electric License in their favour they cannot be deemed to be licensees unless however they hold some other license, which would then bring them within the orbit of section 9(1). As the matter stands they would not be governed by section 9 of the Indian Electricity Act, 1910, for a person to whom a license has been transferred with the consent of Government and who is, in fact, under that license selling electricity, is a person licensed under Part II. Electricity Act to supply energy (IIR 91940) all 568. (D.B.) Further the power to veto a mortgage or other alienation as contemplated by section 9(2) of the Act can only be exercised when the Electric Company has submitted to the jurisdiction and control of Government by taking and a license with regard to the electricity. The taking of a license is in the nature of statutory condition precedent for Government control (Budhsingh Balchand vs. Arnold & Co. (1934) 99 C.W.N. 1018).

Hence Government cannot have any control over M/S Mahendra Electric Works and the agreement between that party and the new Jambusar Electric Supply Co. Ltd. is not governed by the Act. Government cannot therefore transfer the license to the new Jambusar Electric Supply Co. Ltd. unless the company under liquidation applies to Government for permission to make such a transfer. In absence of such an application from the old company Government can only grant permission to

transfer the license to M/S Mahendra Electric Works and after this is done M/S Mahendra Electric Works will have to approach Government for permission to transfer the license to the new Jambusar Electric Supply Co. Ltd. The view taken in para 6 of the P.W.D note dated 15-10-48 is therefore correct. P.W.D. may be informed accordingly.

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Under sub-sec. (2) of sec. 9 of the Indian Electricity Act, 1910, the licensee shall not at any time assign his license or transfer his undertaking, or any part thereof., by sale, mortgage, lease, exchange or otherwise without the previous consent in writting of the Provl. Govt. and under sub-sec. (3) any agreement relating to any mature described in sub-sec. (2), unless made with, or subject to, such consent shall be void. Consition 1 of the Agreement dt. 2-1-1948 entered between the Jambusar Electric Supply Co. Ltd. (in Liquidation) and Mr. Mahendra Jiwanlal Shah, the vendors agreed to assign and transfer and the purchasers agreed to purchase the license and all the right, title interest and benefit of every description of the vendors and the rights and privileges granted under the license at a price of Rs. 4.865/- There is nothing in the Agreement to indicate that the Jambusar Electric License was assigned to Mr. Mahendra Jivanlal Shah after obtaining the previous consent in writting ~~of the~~ of the Govt. in his letter dt. 18-10-48, the Chairman, Jambusar Electric Supply Co. Ltd. "admits that the Co. should have obtained Govt. sanction before the assignment deed was entered into". As the license was assigned without obtaining the previous consent of Govt. under sec. 9(2) of the Indian Electricity Act the agreement relating to transaction not being made with or subject to such consent is void and ex post facto sanction of Govt. would not validate the assignment which is ab-initio void The view taken in para 6 of the P.W.D. office note dt. 15.10.48 is correct

P.M.Lad
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Office of the R.L.A.

Seen and returned.

As the license was assigned without obtaining the previous consent of Government under section 9(2) of the Indian Electricity Act, 1910, the agreement relating to transaction not being made with or subject to such consent is void, and post facto sanction of Government would not validate an assignment which is ab initio void. The view taken in para. 6 of the Public Works Department office note dated 15-10-48 is correct.

P.M.L

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U.R. to P.W.D. , No. 718 , dated the 20th January 1949

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R.I.No. 15248 d/-20.11.48.

Submitted

It appears that shops Nos. 1, 2 and 3 at Irani Mansil, Tulsi Pipe Road, Dadar were requisitioned by Govt. under rule 75-A (1) of the Defence of India Rules for the Govt. Grain shop but were subsequently let to the Dadar Co-operative Society, Ltd. on 25-8-47 It is stated that the electric installation in this shop was damaged at the time of the R.I.N.Mutiny in 1946 but the same was not repaired since them. On the Collr. of Bombay requesting the B.E.S.T. Company to instal a seqarate meter for the use of the Society the Company sent a printed form to be filled up by the service holder and the landlady. The form was sent to the landlady for her consent to the installation of the meter in the shop. Messrs. Ongrat & Co. Solicitors to the landlady challenge the authority of the Collector to sub-let or re-let the shop to the Society, has refused to fill in the form and has even threatened to file a suit against Govt. for wrongful use of the shops for a purpose which was different from which it was requisitioned. The Collector of Bombay sg suggests that some legal action against the landlady, may be taken. The papers are shown to the R.L.A. for advise.

3. In his opinion Nos. 4186, dated the 6-6-1946 and No. 5836 dated 4-6-1947 the R.L.A. has held that it is open to Govt. to let the requisitioned land to a cooperative Society until it is released from requisition. The threatened suit even if filed by the landlady appears therefore to be defensible. The printed form which was required to be filledup by the landlady of a building before a meter is installed by the Electric Coy. has been obtained informally from the B.E.S.T. Coy. has been obtained From the requisition form it is clear that the landlady must agree to laying th necessary service line in her property before the

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meter is fixed. There is no law which can force her hands to agree to the installation of the meter because the whole of the building was not requisitioned by Govt. It appears that the service line can be laid x just in front of the shop if it is abutting on the road. The other alternative appears to be that the meter can be fixed up in the adjoining shop with the permission of shop-keeper if the energy is already supplied to him. In any case, the best course would be for the Controller of Govt. Grain ~~Sipp~~ Shops to explain the difficulties to the B.E.S.T. Coy. and find a way out of the difficulty.

Nadkarni
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During requisition the premises vest in Govt and no relationship of landlord and tenant would exist between the owner and Govt. But so far as the Society is concerned ~~in~~ it can be considered the tenant of Govt. If so, would it not be possible for Govt. to sign the form as landlord Pl. consider this point for what it is worth.?

RTK. 2-12.

Resubmitted

In this case the whole building was not requisitioned but only the shop which is now let to the Society. The service line and the meter is to be fixed not in the shop proper but on some open space such as passage to the staircase of the building, Permission of the landlady would be necessary for this purpose.

Pl. see A at p. 23 ante . The landlady has no objection to a separate meter being instaked in the requisitioned premises provided no damage is done to the building Then the questions are.

1) whether the landlady can be forced to give her consent to

to installation outside the requisitioned premises ; if not,

2) Whether ~~xkm~~ she can be asked to foot the bill for installation inside the requisitioned premises .

pl. consider the order of requisition and submit the case through A.S.

RTM. 6-12.

Office of the R.L.A.

The requisition form forwarded by the Controller of the Government Grain Shops at page 55 ante does not required the consent of the landlady for the supply of electrical energy. The landlady's name and address only are required to be filled up and the requisitio is to be made by the occupant and not by the landlady. Prima facie there appears, therefore no difficulty in obtaining the electric supply from the B.E.S.T. coy.

If however the cable is required to be laid through the other property of the landlady her consent would be necessary. B.E.S.T. may therefore be consulted as to whether the installation could not be made except through the other premises of the landlady.

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U.R. to the Controller of Government Grain Shops
Bombay, N.o. 557 dated the 17th January 1946.

S.C. 15.6
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L.D.R.I.No. 11601 d/-14-9-48.

Submitted with reference to P.W.D. note at p. 19 ante.

2. The facts briefly are :-

The Prabhat Electric Syndicate, Ltd. intends to instal a generating plant in the premises of the Pioneer Magnesia Works Ltd. at Kharghoda for supplying electrical energy to the Company at rates mutually agreed upon and for utilising the surplus energy for the Syndicate's own use i.e. for flour mill and a workshop to be set up by them. The Syndicate requests Govt. to advise whether it is necessary to obtain the sanction of Govt. under section 28 or a license under sec. 3 of the Indian Electricity Act, 1910.

The Electrixity Electrical Engineer to Govt. is of opinion that since the Prabhat Electric Syndicate is going to supply energy to the factory, only it will not amount to engaging in the business of supplying energy. The P.W.D. requests R.L.A. to offer his remarks. The question for consideration is whether supply of energy only to the Pioneer Magnesia Works Ltd. will amount to engage in the business of supplying energy.

3. Sec. 28(1) provides that no person other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Provincial Govt. and in accordance with such conditions as the Provl. Govt. may fix in this behalf, any contract to the contrary shall be void.

The criterion mx in determining whether a particular case of supplying energy comes within the scope of "engaging in the business of supplying energy" depends on the facts of each case as to whether the supply has been xtxt started or run for the purpose of making a profit. The S.C

the Syndicate intends to instal the generating plant for the sole purpose of running the Pioneer Magnesia Works. Though the undertaking will be carried on at a rate mutually agreed upon, this will not prevent the inevitable result of profit. The fact that the Syndicate will use up the surplus energy for its own use is immeterial and will not affect the primary purpose of profit. Moreover the contention put forth by the Electrical Engineer that the energy will be supplied to the factory only will not arise (vide R.L.A.'s No. 490 dt. 7-2-28) since the question is whether the undertaking is for the making of profit even if the supply is to one factory only.

On general occassions we have interpreted the words "engaging in the business of Supplying energy Pl.look up previous opinions. and put up

Resubmitted with opinions.

The word "syndicate" is defined by Blackwell as " combination or persons or firms united for the purpose of enterprises too large for individuals to undertake; or a group of financiers who buy up the shares of a company in order to sell them at a profit by creating a scarcity.

The subject of enterprise of the prebhat Syndicate is Electricity and it can be easily presumed that the supply or electrical energy is the Rxghubai regular business of the Syndicate though nothing is specified in the case papers. Since the regular business of the Syndicate is the supply of energy (vide R.L.A.'s No. 269 dated 25-1-26) and the S.C.

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Office of the R.L.A.

Supply of energy

Indian Electricity Act, 1910, Sec. 28(1).

To decide whether a person is engaged in the business of supplying energy within the meaning of section 28(1) of the Indian Electricity Act, 1910 the sole criterion is whether the supply has been started or run for the purpose of making a profit (see R.L.A.'s opinion No. 4815, dated 11-6-1942). In the present case the Prabha Electric Syndicate Ltd. intends to instal a generating plant in the premises of the Pioneer Magnesia Works Ltd. at Kharagheda for supplying energy to the Company at rates mutually agreed upon and for utilizing the surplus energy for the syndicate's own purpose. Obviously the supply of energy to the Pioneer Magnesia Works Ltd. is the main business of the Syndicate and that is for the purpose of making a profit. Consequently, the Syndicate would be engaging in the business of supplying energy under section 28(1).

P.M.Lad
14-12

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11915 dated the 15th December 194

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L.D.R.I.No. 12171 dt. 28-9-48.

Submitted with reference to the P.W.D. (El. Br.), note at pages 37-39 ante.

2. The Contract entered into between the Thana Borough Municipality and the Thana Electric Supply Co. for the supply of electricity for street lighting has expired in June 1948. A fresh agreement could not be executed as there is a dispute between the two parties and the Electrical Engineer to Govt. was requested to contact both parties and to settle the differences. But his efforts were not fruitful. The main points of the dispute are (i) regarding rates of supply for unit (ii) regarding putting up and maintaining street lighting installation. As regards (1) it has been decided to refer the matter to arbitration under clause XII of the Schedule to the Indian Electricity Act, 1910. Regarding the second point the Electrical Engineer considers that the Municipality should be in a position to demand the continuance of the arrangement (regarding the maintainance of the installation). P.W.D. note states that though it is the standard practice adopted by all Supply Companies to erect and maintain street lighting installations at their own costs, there does not seem to be any any specific provision, whereby the supply Cos. can be forced to maintain and put up the installations.

R.L.A. has been requested to advise.

3. The Local Govt. or Local authority can require a licensee to provide distributing mains under clause V of the Schedule to the Act. Further the Local Authority or Govt. can require the licensee to supply energy forpublic lamps under clause VIII of the Schedule. That, it is obligatory on the Supply Cos. to supply electrical energy is indicated by the words "shall" in sub-clause (1) of that clause. Clause XII of the Schedule deals with the question of the price to be charged for a supply for public lamps and in case

dispute the matter is to be settled by arbitration. It runs as follows.

"The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and the mode in ~~xhxx~~ which those charges are to be ascertained shall be settled by agreement between the licensee and the Local Govt. or local authority as the case may be and where any dispute arises determined by arbitration".

It is true that neither the Indian Electricity Act, 1910 nor the Rules made thereunder provide for cases whereby the Supply Cos. can be forced to set up and maintain lighting installations. But such a dispute, it appears can be settled by arbitration under clause XII. The words "charges" mentioned in cl. XII of the Schedule need not be interpreted in a restricted manner because while fixing the charges, costs of energy, the costs of maintaining installations may be taken into ~~xxxxx~~ consideration. It appears that the arbitrator appointed under sec. 52 of the Act can take into consideration, depreciation and other incidental charges as well as the costs of maintainance. If that presumption is correct, then, the dispute Re: the erection and maintainance of the lighting installation can also be referred to arbitration (cf. R.L.A.'s opinions Nos. 514, dt. 16-1-47 and 5828, dt. 4-6-1947).

Nadkarni
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A.A.S

Subject to the terms and conditions of the agreement dated 12-6-1933, the Thana Electric Supply Co. Ltd. agreed to supply to the Thana Borough Municipality for a period of 15 years all electrical energy as the Municipality may require for the purposes of street lighting only. It appears that the Thana Borough Municipality wrote to the Thana Electric Supply Co to give an ~~xxx~~ idea as to the minimum rate that the company would charge in case the municipality entered into a new agreement. The terms quoted by the Thana Electric Supply Co are these :-

1) Supply of electrical energy to be given at ~~xx~~ the

sub-station or sub-stations of the Company where also meters would be located, and the municipality would

Office of the R. L'A.

Reference to arbitration in respect of rates

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licensee's liability to erect poles fitted with public lamps for receiving energy from the service line.

Clauses VI, VIII & XII of the Schedule to the Indian Electricit y Act, 1910.

The view taken by the Electrical Engineer to Government is correct. By virtue of clause XII of the Schedule to the Indian Electricity Act, 1910, which is deemed to be incorporated with and to form part of the license under clause (f) of section 3(2) any difference or dispute arising between the licensee and the local authority in respect of charges for the supply of energy for public lamps can be determined by arbitration. Consequently, the dispute between the Thana Municipality and the Thana Electric Supply, Co, Ltd. in respect of rates can be referred to arbitration.

2. The supply of energy for public lamps can be requisitioned under clause VIII of the Schedule to the Indian Electricity Act. Sub-clause (2) thereof provides that the provision of sub-clause (b) of the first proviso, and of the third and fourth provisos to sub-clause (1) and the provisions of sub-clauses (2) and (3) of clause VI shall, so far as may bem apply to every case in which a requisition for supply of energy is made under this clause as if the Provincial Government or local authority were a owner or occupier within the meaning of those provisions. Sub-clause (2) of clause Vi provides that any service line laid for the purpose of supply in pursuance of a requisition made under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee. "Service line" as defined in section 2(1) means any electric supply line through which energy is or is intended to be supplied by a licensee, - (i) to a single consumer either from a distributing main or immediately from the licensee's premises, or (ii) from a distributing

main to a group of consumers on the same premises or on adjoining premises, supplied from the same point of the distributing main main. Reading these provisions together it appears that the existing electric installations supplying energy to public lamps will have to be maintained by the Thana Electric Supply Co. Ltd. But, so far as the service line to be laid for the purpose of supplying energy to public lamps in new areas of the municipality is concerned, the position appears to be a little differen . The proviso (b) to clause VI (1) of the Schedule provides that the licensee shall not be bound to comply with any requisition unless and until the person making it if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made and of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property. It appears that the Thana Electric Supply Co. does not dispute him its liability to lay down service line for the purpose of supplying energy to public lamps in new areas. But what it disputes is its liability to allow public lamps to be attached to the poles over which its service line passes. There is no provision in the Act requiring the licensee to allow public lamps to be attached to the poles of his service line. Consequently, the Municipality will have to make its own arrangements in new areas to erect poles fitted with public lamps for receiving energy from the service line for consumption.

P.M.Lad 2-1

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 806 , dated the 22nd January 1949.

L.D.R.I.No. 1938, dt. 10.2.49

Submitted with reference to R.L.A.'s opinion No. 169 dated 7th Jany. 1949. The facts of the case have been fully stated in o.M. dt. 15/11.

P.W.D. presumes that Govt. is competent to permit M/S. Tatas to supply electrical energy to M/s. G.G. Damdekar Machine Works, inspite of objection raised by the Amalgamated Electricity Coy. R.L.A. has been requested to confirm this presumption. In the above mentioned opinion R.L.A. has held that :-

Government will have, therefore, in consult the Amalgamated Electricity Company Belgaum , Ltd. and consider whether there are any valid grounds to refuse consent to the Tata Power Company, Ltd. supplying energy to Dandekar Machine Works, Ltd. for their factory at Bhiwandi. Clause 5, subeclause 1(b) of the Nila Mula Valley (H.E.) Licence, 1921, will have no application, since the area of supply is outside the City of Bombay.

The last sentence of this opinion r/w. cls 5(1)(b) and 5(IV,) of the Nila Mula Valley (Hydro-Electric) Licence 1921 makes it clear that the restriction with regard to supply by Tatas to consumers consuming 500000 units and more will not be applicable to this case, as the area of supply is outside the City o Bombay. Thus the contention of the Amalgamated Electricity Coy. (Belgaum) Ltd., that M/S. Tatas are not competent to give supply on this count is untenable and there is no legal objection to granting permission to M/s. Tatas. It is however, for the administrative dept.(i.e.P.W.D.) to consider whether permission should be given to M/s. Tatas to supply energy M/s. G.G. dandekar for their factory at Bhiwandi, even though loss will be caused to the Amalgamated Electric Co. by granting such permission. The P.W.D.

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4 copies.

will therefore have k to decide whether the interests of the consumer of the licensee should be preserved.

S.S.
14.2

A.A. Rep. . .

Seen and returned.

The presumption made in para 2 & the P.W.D. office note dt. 8.2.49 is correct provided the objections raised by the A.E. Co. are considered to be inreasonable and invalid.

Sd/- 16-2

A.L.R. R.T.K.
17-2

R.L.A. P.M.Lad/17-2

It may be pointed out that Govt did consult the A.E.Co. and cared for objections (vide p. 4 ante) The said Coy. submitted it s objections against permitting the Tata Power Coy. to supply Electric Power to Dandekar Machine Works (vide p. 5 ante) That being so, if approved, the points added by R.L.A. may be deleted.

Sd/-.7-.2

A.L.R. The amendment suggested by me may be approved

R.T.K.

17/2

R.L.A.

P.M.Lad/15-2.

Office of the R.L.A.

R.L.A.'s
Opinion No. 169,
Dated 7.1.49.

Seen and returned.

The presumption made in paragraph 2 of the Public Works Department office note dated 8-2-1949 is correct provided the objections raised by the Amalgamated Electricity Co. (Belgaum) Ltd. are considered to be unreasonable and invalid.

P.M.Lad
18-2

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 2028 , dated the 19th February 19

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R.I.No. 807 dt. 18-1-49.

Submitted.

Mr. V.J. Satbhai is granted licenses for the supply of energy to Kopargaon and Belapur town in 1940 and has been allowed to complete the works upto 31.3.49. He wants permission to levy surcharge and also a suitable increase in rates sanctioned in his licenses for supply of energy so as to bring those rates in line with those Govt. is approving in case of new licenses because although the rates were based on pre-war conditions he had to execute his work after the war, P.W.D. proposed to inform him that the question of fixing a suitable rate of surcharge will arise after the licensee has commenced his supply and for increase in the rates of supply he will have to get his licenses amended under rule 4 of the I.E. Rules 1939. In the meantime sections 1, 3, 4, 57, 58 and 77 and the Sixth Schedule and the Table appended to the seventh Schedule have come into force and in view of sec. 57, P.W.D. considers that the Bom. Electricity Surghaarge Act, 1946 will be void and the action proposed in paras. 3 and 4 of its note dated 3-12-48 at pp. 11-12 ante will not be in order and Mr. Satbhai will have to request Govt. for constituting a rating committee under sec. 57(2)(a) if he wants to increase the sanctioned rates for the supply of electricity, the R.L.A. is requested to advise whether this view is correct.

Office of the L.....

Seen and returned.

2. The view taken in paragraphs 3 and 4 of the P.I office notes at page 19 ante is correct.

Sd. P.M.Lad
R.L.A

G.R. to P.W.D. No. 3430 dt. 30-3-1949.

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4 copies.

Office of the R.L.A.

Indian Electricity Act, 1910, Sections 27 and 28.

As regards the first question, the Crown is not bound by any of the provisions of the Indian Electricity Act, 1910, unless, it is expressly mentioned therein (as in section 30 and section 37(2) (f) and (h) or by necessary implication it has agreed to be so bound. As the B. B. & C. I. Railway is a Government Railway, it is not bound by the provisions of section 28 of the Indian Electricity Act (cf. R.L.A.'s opinion No. 4890, dated 6.10.1933). nor would the supply of energy to the Ashram be thebusiness of the Railway as it does not propose to make any profit by the supply (cf. R.L.A.'s No. 34 dated 4.1.1934). Consequently, no sanction of Government would be required under section 28 to enable the B.B.& C.I. Railway to supply energy to the Ashram (see also R.L.A.'s No. 2143 dated 27.2.1940).

As regards the second question, section 27 provides that notwithstanding anything in this Act, the Provincial Government may, by order in writing and subject to such conditions and restrictions, if any as it m thinks fit to impose, authorise any licensee to supply energy to any person outside the area of su supply and to lay down or place electric supply lines that purpose etc. The Broach Electric Supply and Deve ment Corporation, Ltd. however, states that "the load will be supplied by the B.B.& C.I. Railway as mentioned in our previous correspondence, to whom we shall supply the energy". In short, the licensee would supply the additional load to the B.B.& C.I. Railway and not to the Ashram and the Railway in turn would arrange to supply the energy to the Ashram. Section 27 provides for authorising the licensee to supply energy to a person outside the area of supply But when as stated by the licensee, it would supply the load to the B.B.& C.I. Railway there would

arise no question of supplying energy to a person outside the area of supply. Consequently, section 27 would not be attracted.

P.M.Lad
31-5

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 6108 , dated the 1st June 1949.

Supply

Bombay of electrical energy to Vadgaon.

The Indian Electricity Act, 1910.

Section 4(3)(b) and 27.

Office of the R.L.A.

Mere permission to supply energy as stated at after "A" on page 93 ante without the issue of a license afte following the usual procedure for the issue of such licensee would not have the effect of a regular license. The Public Works Department may, however, varify whether a regular license was subsequently issued.

Section 27 of the Indian Electricity Act, 1910, which provides for permission to supply outside the area of supply cannot be resorted to firstly because the outside area is not yet completely merged in the Bombay Province and secondly because the second pro proviso to the section cannot be complied with.

In view of this difficulty and in view of the time likely to be involved for issuing a regular license for supply to Vadgaon the proper course would be to amend the ix license under section 4(3)(b) after the impending merger of the State areas is complete. If, however, immediate action is deemed necessary licenses can be granted under the Electricity Act, as now applied to the State.

P.M.Lad
11-6
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 6491 , dated the 13th June 19
1949.

Office of the R.L.A

Indian Electricity Act, 1910, Indian States (Application of Laws) order, 1948.

Whether agreement granting the Lunawada electric licence is binding on Government.

The Lunawada Licence, 1947, granted by the Government of Lunawada State was granted by Husur Resolution dated the 5th September 1946. It is stated in clause 7 of this licence that the State should apply in spirit the Indian Indian Electricity Act, 1910, and the Rules "with modifications suitable to the State and parties ". It is obvious that the licencee was not granted under the Indian Electricity Act and the provisions of that Act do not govern the terms of the licence. The licence must therefore be deemed to have been granted in exercise of the prerogative right of the Ruler of the State, Paragraph 5 of the Indian States (Application of Laws) order, 1948 saves certain rights, title and obligations already acquired, accrued or incurred by any corresponding enactment in the state while applying the Indian Electricity Act. But since the licence in this case was not granted under any law but by virtue of a prerogative right Government would not be bound to recognise the same and would not be liable in damages for refusing to recognise it. (see R.L.A.'s opinion No. 3565 dt. 2-4-59). A notice may be issued to the Company pointing out that the licence would not be operative and that the Company would be liable to prosecuteion if it did not comply with the Indian Electricity Act and also to apply for a fresh licence under the Act.

P. M. Lad
19-7
Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 10615 , dated the 20th September 1949.

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Sawantwadi Electric Co.

Indian Electricity Act, 1910,
Grant of licence.

Since Mr. Merurkar did not apply for the assignment of his licence and his licence was revoked, the question of assignment of his licence to Mr. Jamadar under section 9 sub-section (2) of the Indian Electricity Act would not arise. Admittedly, Mr. Jamadar has been supplying energy since 1946 under an executive order issued by the Regent Maharani of Sawantwadi. The supply would, therefore, be deemed to have been allowed in exercise of the prerogative right vested in the Maharani. It is true that no licence was issued to Mr. Jamadar under the Indian Electricity Act, as adopted by the State but in view of the fact the fact that the Maharani accorded him permission to supply energy and that in pursuance of that Order Mr. Jamadar resumed the supply and has been since then supplying the energy, the Order of the Maharani would be deemed to over-ride the provisions of the Indian Electricity Act in respect of the grant of licence and the Order would be saved by the proviso to clause 5 of the Indian States)application of Laws) Order, 1948, To ask Mr. Jamadar now to apply for a ~~x~~ licence would be putting him into an awkward position for, in the event of his so applying Government will have to consider all objections which would be raised by public and the local authority and it would be ~~difficult~~ difficult to say at this stage whether there would not be any difficulty for Mr. Jamadar to obtain a licence. Besides, it would also mean an admission of the supply of energy without any legal cover whereby Mr. Jamadar would be ~~not~~ liable for the breach of the provisions of the Indian Electricity Act, In those circumstances, it would be desirable to hold that the Order of the Maharani was issued in exercise of the prerogative right over-riding the provisions of the Indian Electricity Act prescribed for the grant of a licence and ~~x~~ to issue a licence under the

Electricity Act on his making a formal application.

P.M.Lad
3-12
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 14022 , dated the 5th December 1949.

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Office of the R.L.

Indian Electricity Act, 1910, whether licences granted for supply of energy at Kolhapur, Miraj, Kurundwad etc. are valid under -

The question for the consideration of the R.L.A ' are :-

(1) Whether the licences granted for the supply of electricity at Kolhapur, Miraj and Kurundwad are to be treated as valid or fresh licences are required to be issued under the Indian Electricity Act, 1910;

(2) Whether the agreement for the supply of electricity at Ichalkaranji between the Ichalkaranji Electric Supply Company and the Jahagirdar continues to be in force as or whether a licence is necessary.

2. The cases of Miraj and Kurundwad are governed by the provisions of the Indian States (Application of Laws) Order, 1948, and that of Kolhapur by the Kolhapur State (Application of Laws) Order, 1949. Under sub-paragraph (1) of paragraph 3 of the Indian States (Application of Laws) Order, 1948, read with Schedule I thereto the provisions of the India n Electricity Act, 1910, have been brought into force in the Miraj and Kurunwad States. Under paragraph 5 all enactments in force in the said States and corresponding to the enactmen in force in the Province and brought into force by paragraph have been replealed, subject to the proviso that such repeal shall not affect the Validity, invalidity, effect or - consequence of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred, etc. The Indian Electricity Act, 1910, having been brought into force in these two states the said Act as applied to those States has been repealed. But the licences granted to the Miraj Electric Supply Company and the Kurundwad Electric Supply Company will continue in force Provisions ak similar to those referred to above also find place in paragraphs 3 and 5 of the Kolhapur State (Applicati of Laws) Order, 1949 and consequently the Kolhapur Electric Licence, 1930, also continues in force.

3. In the case of Ichalkaranji the Electricity Company had entered into an agreement with the Jahagirdar of Ichalkaranji for the supply of electricity. No licence und

the ...

the Electricity Act has been granted in this case and therefore the question whether the Kolhapur State (Application of Laws) order, 1949, applies does not arise. The legal position in respect of agreemets entered into with the rulers of merged States has been clearly stated by the R.L.A. in a number of opinions. As observed by the R.L.A in his opinion No. 331-Confl., dated 24-6-1948 (Rajpipla Electric Power House Case) it has been repeatedly ruled that in the cases of cession of territory, any inhabitant of the territory can only make good in the municipal courts established by the new sovereign such rights as a sovereign has through his officers recognised. Such rights as he had under the rule of the prodecessors avail him nothing against the new Government, and could not be asserted in the Court established by that Government except so far as they had been recognised by the new sovereign power. Presumably in the agreement entered into by the Maharaja of Kolhapur (to which Ichalkaranji was attahhed as a jahagir) with the Dominion there is no provision requiring the Provincial Government to respect any such agreements. The agreement entered into by the Ichalkaranji Electric Supply Company will not in that case be legally binding on the Provincial Government. However it will be a matter of policy for the Provincial Government to decide whether the agreement should be allowed to continue But in any case the company will have to apply for a licence or permit under the Indian Electricity Act, 1910, for to allow it to supply energy without a licence or permit would be in contravention of the provisions of the Act.

P.M.Lad
14-11.

Remembrancer of Legal [illegible].

U.R. to P.W.D. No. 12918 dated the 15th November 1949.

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